

UST POLICY COMMISSION MEETING

THE REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

June 21, 2002

9:00 o'clock a.m

UST POLICY COMMISSION

CAROLE A. WHIPPLE

Certified Court Reporter

Certificate #50089

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1 THE MEETING OF THE UST POLICY
2 COMMISSION held on June 21, 2002, at 9:00 o'clock
3 a.m., at the Offices of FENNEMORE CRAIG, 3003 North
4 Central Avenue, Suite 2600, Phoenix, Arizona, before
5 CAROLE A. WHIPPLE, a Certified Court Reporter in the
6 State of Arizona in the presence of:

7 Michael O'Hara, Chairman
8 Roger Beal
9 Ian Bingham
10 Theresa Foster
11 Harold Gill
12 Karen Holloway
13 Nancy Jamison
14 Myron Smith
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ABSENT MEMBERS:
Michael Denby
Elijah Cardon

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1 Davis, myself, Joe Rosendahl, Amanda Stone and her
2 staff and we got a rule out of Sean McCabe for
3 wanting to assist us. He's a former GRRC employee.
4 One of their inside folks to help us resolve these
5 issues.
6 MR. GILL: Okay. Moving on to B if
7 there's no more questions on the GRRC rules. In this
8 meeting we're hopefully going to have any final
9 discussion on the Corrective Action Rule Guidance
10 Document and take a vote on it. There's a couple of
11 issues that I wanted to bring up such as the one
12 that's on the agenda here. I mentioned last time I
13 think that we need to determine how often we're going
14 to revisit the document once it's in place for any
15 changes, additions, and things like that because
16 we've been told all along this is a living document
17 and can be changed as policies change, as situations,
18 conditions change in our work, and I think that is,
19 indeed, a good idea and I think it has to be that
20 way. But I think we need to determine how often we
21 need to revisit. I don't think it makes sense to
22 have it open all the time. We don't want to bring it
23 in for every little thing that someone may feel they
24 need to bring up. I think we need to visit it
25 relatively often. Once a year would be way, way too

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1 Phoenix, Arizona
2 June 21, 2002
3 9:04 o'clock a.m.

PROCEEDINGS

4
5 MR. OHARA: Thank you for attending the
6 June meeting for the UST Policy Commission. I
7 appreciate you all attending. We did reschedule it
8 from Wednesday to Friday so we could have everyone in
9 attendance and make any corrective action to the
10 rules.
11 THE SPEAKER: We can't hear down south.
12 MR. OHARA: Could I get a roll call
13 starting with Ian?
14 MR. BINGHAM: Ian Bingham.
15 MS. FOSTER: Theresa Foster.
16 MR. GILL: Hal Gill.
17 MR. OHARA: Michael O'Hara.
18 MR. BEAL: Roger Beal.
19 MR. SMITH: Myron Smith.
20 MS. HOLLOWAY: Karen Holloway.
21 MS. JAMISON: Nancy Jamison.
22 MR. OHARA: Thank you. Moving on to Item
23 2, the administrative issues. Everyone I hope has
24 had a chance to read the minutes from April and May.
25 Are there any recommended changes, corrections?

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1 far out because there could be some policies or
2 conditions change that we really do need to make a
3 change to the document. And so I want to open that
4 up for discussion as far as how we want to handle
5 that and what we thought would be a good time period
6 for revisiting the guidance document.
7 MR. SMITH: But on the same hand I don't
8 want to hamstring us or the AFC if something does
9 come up in between our set review periods that we
10 can't review it.
11 MR. GILL: I would think that we could say
12 quarterly unless there is nothing that has come up.
13 If there is nothing come up within that quarter that
14 needs any changes we can basically, I guess, say
15 there is no reason to reopen or revisit the document.
16 Something like that.
17 MR. SMITH: I would go further to suggest
18 semiannual, twice a year.
19 MS. JAMISON: I would agree with that. I
20 think quarterly was a little bit of a short time
21 frame.
22 MR. BINGHAM: And a strain.
23 MR. OHARA: Does that entail a lot of
24 resources?
25 MR. BINGHAM: Yes.

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1 MR. SMITH: Guess not. I'll move that the
2 minutes be accepted as written.
3 MR. BEAL: I'll second.
4 MR. OHARA: All those in favor of
5 approving the minutes of April and May say aye.
6 Opposed? So moved.
7 Moving on to Item Number 3, Technical
8 Subcommittee Update. Hal Gill?
9 MR. GILL: The first thing is a general
10 update on the UST Corrective Action Rule. Once again
11 let you know what's going on. Ian?
12 MR. BINGHAM: The rule package went to the
13 Governor's Regulatory Review Council on the 4th of
14 June and there was some questions raised by one of
15 GRRC staff regarding the legality of the rules.
16 Actually more the legality of the statutes than the
17 rule itself. The council voted to push the rule
18 package to be heard at the August meeting and DEQ and
19 GRRC staff have begun working on trying to resolve
20 some of the issues that were raised by that
21 particular attorney. Right now it's scheduled for
22 the August meeting of GRRC.
23 MR. SMITH: Who's working on that, Ian,
24 besides yourself?
25 MR. BINGHAM: Internally it's Shannon

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1 MR. BEAL: What would be the conditions
2 that we would review this? I know things change.
3 That's why you have a living document. But what
4 would be the trigger points to have changes? Some
5 way to bring this type of trigger point to a group
6 and propose to change it as required. You might
7 start working with them and three months into it find
8 out something is not functioning right or be a year
9 into it and not need anything without taxing the
10 resources. Other than the timetable to look at it,
11 is there a way to bring issues up at that time?
12 MR. GILL: The issues could be brought up
13 to the Policy Commission, which probably is where
14 they'd be brought up anyway. But I think as far as
15 semiannual, I would think that we would meet and come
16 up with a list possibly from the regulated public and
17 from DEQ where we think the issues and the potential
18 changes are and additions and deletions or whatever
19 it may be and look at it and see how we're going to
20 do it. If we need a bunch of meetings or if it's
21 relatively simple and a few changes that don't
22 require meetings.
23 I think that's the way I think we would
24 have to start is come up with lists from the
25 regulated side and DEQ and go from there every six

1 months. I think that the issues can come up during
2 that period if the operator is having problems or DEQ
3 brings it up to the Policy Commission.

4 MR. SMITH: Yeah. I think it would be
5 dangerous to come up with a list of conditions or
6 items that would trigger a review or something. I
7 mean we'd never have everything on the list. The
8 list would be huge. I just think it needs to be open
9 and brought to the Policy Commission and discussed,
10 you know, is this something that needs immediate
11 attention or can it wait for a semiannual review.

12 MS. JAMISON: Mr. Chairman, Mr. Gill, I
13 think Myron makes a good point and I agree that as
14 DEQ works with this policy they will begin to see
15 whether there are particular areas of the policy that
16 could be more clear or that are creating difficulties
17 in interpretation. And one nice thing about a policy
18 it's not a rule. It doesn't have the force of law.
19 It's for everybody's benefit in working these things
20 through. So, you know, if semiannually we ask for a
21 report on how things are going you will have heard
22 from your constituents and perhaps from your own
23 experience and DEQ will have heard things. So that
24 sounds like a good plan to me.

25 MR. GILL: So how would we -- as we

1 that's going to take because there are other
2 operators and consultants and I believe that this is
3 a huge issue with the assignment of the LUST numbers,
4 and we're going along the old way we've been doing
5 it, but we believe we need to see a policy from this
6 point forward how are we going to handle LUST number
7 assignments?

8 MR. OHARA: Could anyone address that
9 briefly?

10 MR. BINGHAM: I've already made a
11 commitment that we would work on it. We had
12 meetings. They want a date. We are moving in a
13 couple weeks. I have no idea what I'm facing once we
14 move. Conference rooms are an issue. I've already
15 told them in the fall. They want an actual date, I
16 cannot give an actual date, I won't give a date. I
17 don't know what I'm facing in the next month to six
18 weeks. I'm not sure what more you want from me.

19 MR. GILL: Within two or three months?

20 MR. BINGHAM: The fall. What happens
21 after the move dictates how quick we can get things
22 up. There is a lot of things that are unknown to me
23 right now relative to the move that to me will trump
24 this from all points of view. Until I know what is
25 happening, I will not give a date. If I'm going to

1 approach the semiannual date then we would just, you
2 know, come up or list down the items identified from
3 both DEQ and the regulated public these need to be
4 worked on at this particular time.

5 MS. JAMISON: You may be the best person
6 to bring to it to our attention you are accumulating
7 a list.

8 MR. GILL: Based on the size we can
9 determine whether it's going to require a number of
10 meetings or something, it could be handled relatively
11 easily.

12 MS. JAMISON: Or what to do. It's a
13 guidance document that needs to be amended in some
14 minor way or there may be another way getting around
15 the problem if there's a problem.

16 MR. GILL: Okay. That sounds fine to me.
17 I don't think that we need to do anything other than
18 say that's what we plan on doing.

19 The only other issue is, which has been
20 brought up several times, as far as we've never
21 completed the discussion of how the Policy Commission
22 wanted to vote on the issue of the guidance document.
23 Take recommendations of the tank subcommittee or
24 discuss particular issues or what?

25 We did hold one more meeting about three

1 give a date I plan on meeting it. But the fall is
2 the best I can do. Again, that is a separate issue
3 from the guidance document, and trying to tie them
4 together and hold one hostage is --

5 MR. GILL: The regulated public doesn't
6 believe it's a separate issue and I don't either. If
7 we can't assign LUST numbers, how do we do our work?

8 How can that be a separate issue? I'm not holding
9 anything hostage. This is something at the very
10 first meeting you did mention you were working on
11 that policy, the DEQ was working on that policy.

12 MR. BINGHAM: And at that meeting I said
13 when we're done with this guidance document we'll
14 work that out. Here we are a year later.

15 MR. OHARA: We need to look at those two
16 issues. Do we want to do that today?

17 MR. GILL: I would just, if he's going to
18 have it in the fall --

19 MR. BINGHAM: The fall. We had a
20 stakeholder meeting three weeks ago and the fall was
21 acceptable. What happened since then?

22 MR. GILL: I don't remember that meeting.

23 MR. BINGHAM: You were there.

24 MR. GILL: I don't remember that meeting
25 except we asked for two months, three months or four

1 weeks ago for any other people from the public once
2 the document had been made available to the Policy
3 Commission members and to the public. We had held
4 one meeting to see if anyone had discussion on issues
5 in the guidance document and there were none. So I
6 need to hear from members of the Policy Commission
7 how they want to move forward on voting on this.

8 MR. OHARA: Did you have a recommendation
9 from your subcommittee to approve?

10 MR. GILL: Well, I have no problem with
11 the document. I would like a commitment from DEQ on
12 a couple of the issues that we understand are still
13 outstanding and we've agreed to go ahead and move
14 forward with a guidance document and the vote as long
15 as we know these other policies are coming. And one
16 of them was the --

17 MR. OHARA: LUST Number Assignment
18 Policy?

19 MR. GILL: Yes, the LUST Number Assignment
20 Policy because we know that one is in the works, the
21 LUST Number Assignment Policy and the LUST Case
22 Reopening Policy. We do know that the LUST Number
23 Assignment Policy is -- we were told by Ian that once
24 this is put to bed, so to speak, then they can start
25 on those policies, but we need to know how long

1 months or something like that. What exactly does the
2 fall mean?

3 MR. OHARA: Do you think that you'd be
4 prepared to at least discuss dates within the two
5 months between now and then?

6 MR. BINGHAM: Yeah, I'd have a better
7 feel.

8 MR. OHARA: We always have the
9 opportunity like to revisit the guidance, the living
10 document, every six months or even earlier, every six
11 weeks. Can we approve the guidance document?

12 MR. GILL: I'd like to be able to approve
13 the six months to revisit it at the very minimum. We
14 might be able to approve those policies at a minimum
15 the next time we revisit this. That's a full six
16 months which would actually be the end of the fall.
17 I would like to see it done earlier than that and we
18 could have our meetings and decide discussions on
19 that and then be ready to approve it when we revisit
20 this document.

21 MR. OHARA: We could probably craft our
22 motion such that it's subject to the setting of the
23 date for those two issues and leave the door open.
24 Is there any discussion on the issues on the guidance
25 document other than those two issues you brought up

1 at the last meeting?
 2 MR. GILL: I just want to make sure the
 3 opportunity is given for any outside people to make
 4 comment. The only question I would have today is
 5 there any results from GRRC that would impact us at
 6 this time?

7 MR. BINGHAM: No.

8 MR. O'HARA: Comment?

9 MR. BEAL: No comment. I would like to
 10 entertain a motion if you want to try to craft
 11 something that --

12 MR. GILL: I think if we can, if the
 13 subcommittee would recommend voting for the guidance
 14 document with a caveat by the time we revisit this
 15 document, which would be in January, then we would
 16 have the other policy statements in place put in that
 17 document and voted upon.

18 MR. O'HARA: Would January be appropriate,
 19 Ian? Do you think we'll have those two policies?

20 MR. BINGHAM: It should be.

21 MR. O'HARA: Okay.

22 MS. JAMISON: But if we don't have them
 23 now and if there is something we really need to vote
 24 on, we'll have to vote on them when they're ready
 25 anyway. So that shouldn't impede the rest of the

1 Good. Continue please. Item C.

2 MR. GILL: C is discussion of the ADEQ UST
 3 State Assurance Fund issues. Number 1, status of
 4 stakeholder meetings and I'll ask Patricia Nowack to
 5 help me on this because I've been out of pocket for
 6 about two weeks now and I don't know what, if
 7 anything, changed on the schedule for cost savings
 8 meetings and the parking lot issues and the SAF Rule,
 9 State Assurance Fund. Patricia?

10 MS. NOWACK: Thank you, Mr. Gill, Mr.
 11 Chairman. For the record my name is Patricia Nowack.
 12 The SAF cost ceilings, the next meeting is scheduled
 13 for next Thursday, the 27th, at 1:00 p.m. It will be
 14 held on the 8th floor of the Abacus building which is
 15 located at 3031 North 2nd Street. It's just adjacent
 16 to the DEQ parking lot, just past it.

17 MR. GILL: Could you repeat it one more
 18 time?

19 MS. NOWACK: The address?

20 MR. GILL: All the particulars?

21 MS. NOWACK: The date is Thursday the 27th
 22 of June from 1:00 p.m. to 4:00 p.m. in the Abacus
 23 building at 3031 North 2nd Street. We asked for, in
 24 our last meeting, we asked for comments from
 25 consultants. There was some good discussion in the

1 policy.

2 MR. GILL: As I said as the chair of the
 3 subcommittee I would recommend that the -- or make a
 4 motion that as the chair of the Technical
 5 Subcommittee I would recommend the Policy Commission
 6 vote yea for the Corrective Action Guidance Document
 7 with the caveat I'd like to see the two policies on
 8 LUST number assignment and LUST case reopenings which
 9 would be available for review and vote by the time we
 10 begin to -- that in six months we recommend looking
 11 at the document again.

12 MR. O'HARA: We'll now vote. The vote
 13 will be yea on approving the Corrective Action Rule
 14 Guidance Document with the understanding that we'll
 15 revisit or we will review the policies on LUST
 16 assignments and LUST case reopening in January.

17 MR. GILL: By the date of the next time we
 18 revisit the document.

19 MR. O'HARA: Everybody understand the
 20 motion?

21 MS. HOLLOWAY: I'll second it.

22 MR. O'HARA: All those in favor of
 23 approving the UST Corrective Action Rule Guidance
 24 Document?

25 MR. SMITH: We should have a call to the

1 meeting and we were promised some comments from the
 2 consultants. To date we have not received one single
 3 comment from consultants. But we will go ahead and
 4 hold the meeting. We need to move forward on the
 5 cost ceilings. We have some internal changes that we
 6 know we're going to make. So we can discuss those at
 7 the meeting on Thursday and we'll continue to move
 8 forward with them as scheduled. We have to get them
 9 out by statute by December 15th, so we can't delay
 10 moving forward on the meetings.

11 MR. GILL: There will be one or two sent
 12 today. I know there are some coming today.

13 MS. NOWACK: Which we probably won't have
 14 sufficient time to review prior to the meeting on
 15 Thursday. We plan to go forward with what we have at
 16 this state.

17 We have no meetings scheduled for the SAF
 18 Rules at this time. Again, we were waiting for the
 19 corrective action rules to be in place. I think
 20 we're probably about ready to start scheduling
 21 meetings and we should be doing that by the next
 22 Policy Commission meeting which is in August. So I
 23 should have more information by then.

24 MR. SMITH: It's been three years since we
 25 did the cost ceiling review?

1 public to see if there is any last comments before we
 2 do a final vote.

3 MR. O'HARA: Call to the public? Would
 4 anybody in the public like to make a comment on the
 5 UST Corrective Action Rule Guidance Document? Mr.
 6 Beck?

7 MR. BECK: Brian Beck. We do have a
 8 fairly substantial problem with the rules or the
 9 document as written because in the initial part of
 10 the title it simply says "release reporting". We
 11 don't feel that the document even comes close to
 12 filling that need in the two issues that were just
 13 discussed here.

14 Before the next GRRC meeting if we don't
 15 have something in hand we won't be able to support
 16 that and we'll bring in a number of other people not
 17 to support that document going through unless we have
 18 something in hand saying that they will proceed and
 19 we will have a date to fulfill what Mr. Gill has
 20 brought up.

21 MR. O'HARA: Any other comments? There's
 22 a motion on the table and it's been seconded. All
 23 those in favor of approving the corrective guidance
 24 document please say aye. All those opposed. So
 25 moved.

1 MS. NOWACK: Yes, sir, it has.

2 MR. SMITH: I'm surprised.

3 MR. GILL: Actually in the parking lot
 4 issues, I thought about that. We had in the
 5 discussions for the guidance document we kept a list
 6 of parking lot issues to be discussed that basically
 7 overlap between state insurance fund issues and the
 8 guidance document issues and basically those will for
 9 the most part be discussed in the cost ceiling.

10 MS. NOWACK: That is my understanding
 11 also.

12 MR. GILL: Because we'll be discussing the
 13 item descriptions which is the task definitions and
 14 in most cases that will cover the parking lot issues.
 15 C.2, the latest statistics on CRU/SAF
 16 application backlog. I'd just ask Ian and/or
 17 Patricia.

18 MR. BINGHAM: You forgot my name already?
 19 Again, backlog, how we define it is outside of the
 20 cycle time provided by statute which is decisions out
 21 within 90 days. For direct pays, there are a total
 22 of 35 direct pays of which five are greater than 90.
 23 Of the five, three of them were previously received
 24 as reimbursements and converted to direct pay
 25 applications recently. The other two were completed

1 this week actually. I don't think they have gone
 2 over yet but probably will today.
 3 Preapproval applications, 34 in house.
 4 Six of those are greater than 90 days. I know one's
 5 completed and the other five should be done shortly
 6 if I'm not mistaken.
 7 Reimbursement, the big one 626 for which
 8 502 are greater than 90 days.
 9 MR. GILL: Oh, okay. Any other discussion
 10 or comment on the backlog? C.3, basically, I don't
 11 know if you were present for this or not, Patricia --
 12 MR. O'HARA: I didn't have a chance to
 13 talk to them. Sorry.
 14 MR. GILL: I know you have the slides made
 15 up so we can do it at that meeting.
 16 MR. O'HARA: We'll do it at the next
 17 meeting. Can I ask a question on the backlog? Do
 18 you know if the situation is getting any better,
 19 status quo, backlog getting bigger? How would you
 20 compare it to prior months?
 21 MR. GILL: I'd have to look and see. The
 22 reimbursement is going up because the total a few
 23 months ago was less than 600. And so to me it
 24 doesn't appear it's going down, but I don't have the
 25 exact numbers.

1 MR. O'HARA: Ian, are you fully staffed in
 2 that department?
 3 MR. BINGHAM: Yes.
 4 MR. GILL: That's all I can say. I don't
 5 have this broken out.
 6 MR. O'HARA: Your goal is at some point
 7 for the reimbursement to get ahead of the curve on
 8 reimbursements?
 9 MR. BINGHAM: Yeah.
 10 MR. O'HARA: Okay. Sorry.
 11 MR. GILL: Okay. 3.D was a discussion of
 12 the Brian Beck issue which was several letters that
 13 were handed out, or sent to the members. This has
 14 been on the agenda a couple of times now I think.
 15 MR. O'HARA: Want to allow Brian --
 16 MR. GILL: Yeah. If there is nothing from
 17 the Policy Commission. Mr. Beck, if you could just
 18 go through, I guess, generally what the issues are
 19 and then refer to the different letters, however you
 20 want to do it.
 21 MR. BECK: Brian Beck again. From the
 22 materials that you've been directed, made directly
 23 aware that there's a failure on the part of the
 24 underground storage tanks. The Claims Review Unit
 25 and the SAF comply basically with 14-10 -- 49-1014.

1 This is the section of Arizona law that simply
 2 addresses rules and policies and guidance.
 3 Under 49-1014 the director adopts rules
 4 and establishes policies and guidelines. All
 5 policies and guidelines are issued by the director
 6 and the director shall provide written notice to
 7 persons regularly through the effective date of the
 8 policy or guidelines that affect the substantive
 9 rights of owners or operators or other parties
 10 regulated under the UST program.
 11 Also provided under 49-1014 the Department
 12 shall not base the determination of compliance with
 13 the requirements of the chapter whole or in part
 14 based upon a policy or guideline that is not
 15 specifically authorized by statute.
 16 Since late 2000 ADEQ has taken the
 17 viewpoint that work plans, correction action plans
 18 and preapprovals that were approved in the past years
 19 are now subject to a number of new undocumented
 20 policies.
 21 As provided in 49-1014 the director
 22 provided a written notice again to persons regulated
 23 before the effective date of the policies.
 24 Additionally, the policy or guidelines shall not be
 25 retroactive or applied retroactively except as

1 specifically authorized by law or the agreement of
 2 the Department and the person who is regulated by
 3 that particular chapter.
 4 We're seeing an awful lot of the
 5 previously approved documentation plans, work plans
 6 and preapprovals that are three, four, five and six
 7 years old being applied to new interpretation by the
 8 Department on what currently was negotiated way back
 9 then. Again, applying things retroactively to
 10 something previously negotiated under a number of
 11 different circumstances, appeals, et cetera.
 12 When you take a look at the whole UST
 13 Trust Fund and the Assurance Fund they were
 14 established in 1986 with the amendment of sub Title
 15 I, RCRA, Resource Conservation Recovery Act. We take
 16 the viewpoint, well not take the viewpoint, as
 17 specified in the original documentation it says the
 18 purpose of SAF was threefold; provide funds or moneys
 19 for overseeing the correction action taken by a
 20 responsive party; provide moneys for cleanup of UST
 21 sites where the owner or operator is unknown, unable
 22 to respond or requires emergency action. Currently
 23 in the nation there is about four percent of the
 24 corrective action taking place that are under that
 25 particular category. Here in the State of Arizona if

1 you look at the state lead project it looks like
 2 there's less than one percent. So we need to see if
 3 there are more of them sitting out there.
 4 The third thing is provide a mechanism to
 5 ensure cleanups being conducted are not interrupted
 6 due to lack of funds. Early within the Arizona SAF
 7 Program it was found that the reimbursement program
 8 took too long and cleanups were being stopped due to
 9 reimbursements of costs being late. As a result
 10 Arizona developed a preapproval direct pay program
 11 within the overall SAF Program. The purpose of this
 12 was to ensure the people doing the cleanups were paid
 13 and the cleanups would continue to protect the
 14 Arizona groundwater and the public.
 15 We asked the UST Policy Commission to do
 16 the following: To ensure that the State of Arizona
 17 has adequate protection of human health and
 18 environment. This we see as a need to seek out why
 19 ADEQ have been creating unnecessary delays in policy
 20 in reviewing and approving various work plans,
 21 corrective actions and preapproval.
 22 Secondly, we see that the SAF has, or the
 23 UST Policy Commission needs to see if the SAF has
 24 appropriate use of funds, moneys. The questions to
 25 be answered why is ADEQ paying interest on unpaid

1 claims. Why has the CRU been delayed in processing
 2 new claims, has there been an increase in appeals and
 3 associated costs, why has ADEQ created electronic
 4 applications that tap the general SAF Fund instead of
 5 utilizing the preapproved funds and wasting tens of
 6 thousands of dollars of general funds and ADEQ time,
 7 and leaving unused encumbered funds?
 8 Three, to review and discuss and recommend
 9 to the director useful policies and guidelines. Most
 10 of the apparent problems we see have been encountered
 11 from the undocumented policies that are apparently
 12 being applied.
 13 And, four, provide to the director a
 14 statement requesting the UST Program and SAF applied
 15 to state law, provide written policies and guidelines
 16 and stop using undocumented policies and stop
 17 applying these policies retroactively.
 18 MS. JAMISON: Mr. Chairman, could I ask
 19 Mr. Beck, would you repeat number three again?
 20 MR. BECK: To review, discuss and
 21 recommend to the director of useful policies and
 22 guidelines. Also, apparently the problems we have,
 23 we see and have encountered are from undocumented
 24 policies and how these policies are applied as far as
 25 being consistently applied.

1 MS. JAMISON: And number four was?
 2 MR. BECK: Provide to the director a
 3 statement requesting the UST Program and SAF comply
 4 with state law, provide written policies and
 5 guidelines, stop using undocumented policies, and
 6 stop applying these policies retroactively.
 7 MR. O'HARA: Were those things you just
 8 mentioned, were they in your letter specifically?
 9 MR. BECK: They were in the, I believe,
 10 November 20th letter, the third one about complying
 11 with 49-1014.
 12 MR. O'HARA: Everybody have the
 13 opportunity to read these letters?
 14 MS. JAMISON: Mr. Chairman, I spent a fair
 15 amount of time looking at the documentation submitted
 16 by Mr. Beck and I also took a look at the index of
 17 DEQ's substantive policy statements. There are a
 18 number of substantive policy statements that relate
 19 to the UST Program. I think what we have here again
 20 is an example of disagreements and disputes in
 21 ongoing specific case matters where perhaps somebody
 22 on ADEQ staff has used the word policy and the
 23 interpretation by Mr. Beck, and possibly by others,
 24 is that this is an agency policy that either is
 25 written down somewhere as a substantive policy

1 statement or ought to be. I doubt that ADEQ would
 2 agree that it's proceeding in violation of the law.
 3 And I think that if anybody has a particular belief
 4 that that is the case in a particular case, there are
 5 legal remedies to pursue for that purpose and to get
 6 those issues resolved. I think that's -- I would --
 7 may I ask Mr. Beck a question also?
 8 MR. O'HARA: Sure.
 9 MS. JAMISON: Mr. Beck, how many cleanups
 10 have you had to stop?
 11 MR. BECK: Me personally or the group that
 12 I represent?
 13 MS. JAMISON: Well, I don't know who it is
 14 that you represent. I noticed on your letter that
 15 you cc'd everyone but there was no list of everyone
 16 so that I could understand who everyone is.
 17 MR. BECK: Personally I stopped four.
 18 MS. JAMISON: You stopped four because you
 19 ran out of funding?
 20 MR. BECK: We ran out of funding for that
 21 particular project. We're only willing to put up
 22 \$200,000 for any given project. Once we hit that
 23 \$200,000 we cease it. There is no reason to incur
 24 any more moneys past that point.
 25 MS. JAMISON: One clarification, the State

1 Assurance Fund is not a part of federal law. I don't
 2 remember just exactly when the state legislature
 3 provided for the State Assurance Fund, sometime
 4 after 1986 or '87. About 1990 maybe. And it's not
 5 required by federal law that states develop funds to
 6 help owners and operators do corrective actions for
 7 the tanks that they have owned or operated and that
 8 have caused contamination. So I'm not just -- I
 9 certainly agree that the State Assurance Fund is a
 10 part of the state law and the attempt by the
 11 legislature presumably is to get the environment
 12 cleaned up and also to assist the businessmen who
 13 might not be able to do the job without some
 14 assistance. That's all.
 15 MR. O'HARA: Mr. Beck?
 16 MR. BECK: I'd like to refer the
 17 Commission to Mr. Bingham's statement of March of
 18 this year where he said explicitly that his
 19 department had not been forthcoming in producing the
 20 policies that they are currently using. So there is
 21 an issue there as far as policies in which he did
 22 make that statement in the March 2002 UST Policy
 23 Commission.
 24 MR. O'HARA: I wasn't in that meeting. I
 25 did read the minutes. I thought it was a very

1 constructive meeting. I thought that he said going
 2 forward they would bring the policies to us according
 3 to statute of the Commission.
 4 There was a lot in those letters. I don't
 5 know, Hal, if in your subcommittee you can look at
 6 that and maybe have a subcommittee meeting and look
 7 at the general issues that the Policy Commission is
 8 told to look at? Appropriate use of money is one of
 9 our mandates I know. I don't know the specifics.
 10 There's a lot of detail in there. Maybe you could
 11 bring forward some recommendations.
 12 MR. GILL: I think the general issue is
 13 the same issue that's been brought 10 or 20 times,
 14 and it really is what is the definition and what is
 15 the substantive policy. Because I agree that there
 16 are case workers or different individuals within the
 17 state that says it's our policy to do this, and that
 18 may or may not be a written policy. But at what
 19 point when case managers or whoever, section hands or
 20 whoever, make a statement that, well, that's our
 21 policy when it starts affecting all the owners and
 22 operators, then that should be a substantive written
 23 policy. That's what's happening in many of these
 24 issues. It isn't just one person which Mr. Beck is
 25 bringing out saying it's a group that he represents.

1 What we've tried to discuss here several times is
 2 just that issue. There are policy statements or
 3 whatever you want to call them being made that are
 4 affecting every owner and operator because they're
 5 being carried over to every owner and operator. At
 6 what point does that have to be written down so we
 7 know that is the case? That's what we're supposed to
 8 follow?
 9 MR. SMITH: Have these, and I put this
 10 question out generally to Brian and to Ian and to the
 11 AG's office, have some of these discrepancies and
 12 disagreements gone through the ALJ process, gone
 13 through the appeal process and do we have some
 14 written decision on this at this point? Or do we
 15 have nothing? Or these have not gone through the
 16 appeal process yet? Brian?
 17 MR. BECK: On the technical side there's a
 18 number of issues that have been dropped, namely
 19 because of the dollars that were involved beforehand,
 20 and so it's part of the appeal process so to speak,
 21 if we want to get paid we had to drop it at that
 22 point and go to settlement and drop the technical
 23 issue. I've had to do that on five occasions since
 24 January.
 25 MR. SMITH: So these have gone partially

1 through the appeal process and no decision has been
 2 rendered?
 3 MR. BECK: Yes.
 4 MS. JAMISON: Are you stating, Mr. Beck,
 5 that the owner/operator filed a notice of appeal and
 6 a hearing date was set and the process was moving
 7 forward and you and the owner/operator decided to
 8 settle the matter rather than proceeding to the
 9 hearing?
 10 MR. BECK: To a point that is correct.
 11 MS. JAMISON: What is not correct?
 12 MR. BECK: A number of the issues that
 13 have boiled down that we've been told specifically,
 14 gee, if we're talking dollar amounts and there is a
 15 technical issue to it and the dollar amount is below
 16 a certain level and to take it before an OAH hearing
 17 we'd probably not get to the technical issues since
 18 the low dollar amounts, the judge wouldn't want to
 19 hear it on five separate occasions and based on
 20 hearing that from various attorneys involved, the RP
 21 basically said there is no point continuing on.
 22 They'd pay our costs and continue on.
 23 MS. JAMISON: I don't believe I've heard
 24 that.
 25 MR. BINGHAM: Who have you heard that

1 expressed from?
 2 MS. JAMISON: And I just want you to know
 3 that you have every right to proceed to an
 4 administrative hearing on all these issues.
 5 MR. BECK: We as consultants do not have
 6 that right. Even though we are representing the RP,
 7 the RP has to. One particular issue, too, that we
 8 will be taking to technical hearing right now on our
 9 appeals, at the bottom of every statement of every
 10 single appeal that we've been putting through it
 11 stipulates that in my particular case that I am the
 12 representative for the RP in the environmental SAF
 13 issues. To date ADEQ has not recognized me in that
 14 written statement as being the designated
 15 representative. They're saying the consultant cannot
 16 be the designated representative and we've gone round
 17 and round. So, again, they're denying our rights
 18 under 49-1001.
 19 MS. JAMISON: But you are not the owner
 20 and operator of that loss site, correct?
 21 MR. BECK: That's correct. But under
 22 49-1001 they can designate anyone as a designated
 23 representative to represent them on environmental or
 24 SAF issues. We've had that in writing on all of the
 25 appeals. ADEQ has continually refused to recognize

1 the move. All we can do is --
 2 MR. OHARA: You had five things that you
 3 wanted the Commission to do?
 4 MR. BECK: Actually directly from 49-1092
 5 where the Policy Commission was established, I just
 6 took the five or eight or nine items that were there
 7 that you guys are directed to do and comply with.
 8 MR. OHARA: Okay.
 9 MR. BECK: I'd like to see Mr. Bingham
 10 come forth with his March 2000 statement about coming
 11 forth with his policies that they're currently using
 12 that are undocumented.
 13 MR. BINGHAM: I have stated on more than
 14 one occasion we had a technical guidance document
 15 that is addressing these issues. I personally called
 16 Mr. Beck for examples substantiating his claim. We
 17 also put it in writing in a letter from Shannon Davis
 18 asking him to substantiate his claim. Patricia
 19 Nowack took her staff members several days, I took my
 20 staff members, took several days, trying to research
 21 his files to substantiate this. Enough is enough.
 22 Enough is enough. We have a lot of work to do and,
 23 quite frankly, I'm sick and tired of spinning my
 24 wheels over things like this. Enough is enough.
 25 MR. OHARA: All right. Hal?

1 our ability to come in and represent on those
 2 particular issues.
 3 MS. JAMISON: Sounds like a legal matter
 4 that needs to be resolved.
 5 MR. OHARA: Any other comments on
 6 Mr. Beck's letter?
 7 MS. NOWACK: Mr. Chairman, I would just
 8 like to make a couple of comments to the Commission
 9 to address some of the statements that Mr. Beck said.
 10 There were several statements, including
 11 the date the Assurance Funds was established that
 12 were absolutely not correct. I caution the
 13 Commission when statements are made by the public
 14 that they either get the backup information from that
 15 person that's providing it, or at least allow the
 16 department in a follow-up meeting to respond to some
 17 of those statements.
 18 For instance, I cannot imagine Mr. Beck
 19 has any idea of how many claims have been paid, the
 20 dollar amount of the claims that have been made from
 21 the State Assurance Fund, or how much money has been
 22 spent on State lease sites or how many state lease**
 23 sites are currently ongoing either in this state or
 24 any other state. I caution the Commission to either
 25 get the facts about that information or consider

1 MR. GILL: Well, if the issue that I just
 2 described a few minutes ago is not addressed then
 3 this will never go away. This has been happening as
 4 long as we're in this program. We have to figure out
 5 when DEQ can make a statement saying it's policy and
 6 when they can't and when it has to be written down.
 7 If it's not written down it will not go away. This
 8 will continue forever. Enough will not be enough.
 9 It will continue. Get used to it.
 10 MR. BINGHAM: That's why we added this
 11 document. You brought MTBE, you brought two other
 12 issues. We have made commitments to draft policies.
 13 When you come with something legitimate it can be
 14 dealt with. If you just keep throwing out these
 15 things to date every time someone to my knowledge has
 16 come with something cold hard, when you brought
 17 samples of letters to me and showed me, I've taken
 18 action. That's all I've asked. I'm talking about
 19 enough just these ambiguous and all these -- you come
 20 and show me, we can deal with it.
 21 MR. GILL: The unfortunate thing is if we
 22 bring them it's thrown in our face, well, no, that's
 23 an appeal.
 24 MR. BINGHAM: Well, if it is, it is.
 25 MR. GILL: Everything is an appeal.

1 those things as hearsay.
 2 MR. OHARA: Thank you. Any other
 3 comment?
 4 MR. SMITH: No.
 5 MR. OHARA: There's a lot there. I know
 6 we want to avoid site specific issues. Once, again,
 7 I ask Hal, a lot of information there. I think from
 8 the Commission's standpoint we should focus on those
 9 things which we are authorized to focus on. Mandates
 10 and appropriate use of moneys and you're familiar
 11 with the other five. I'll ask Hal and the
 12 subcommittee to take a look at Mr. Beck's letters and
 13 compare it to those mandates and see if there are
 14 things that are on point, and maybe if they are, you
 15 could have a subcommittee meeting, that all the
 16 things could be hashed out and bring forward a
 17 recommendation that we can focus on as a Commission
 18 at a later period of time.
 19 MR. GILL: Okay.
 20 MR. OHARA: We can discuss it as a
 21 Commission. I think we'd be here all day going
 22 through these things.
 23 MR. GILL: I'll try to condense it down
 24 into specific issues and as far as trying to get a
 25 meeting together, right now is a bad time with all

1 MR. BINGHAM: And every appeal is
 2 different. Depending on that case specific you
 3 yourself have commented on different sides of the
 4 coin depending on the site that you are working on.
 5 That's also a reality.
 6 MR. SMITH: Do we need to ask the AG for
 7 an opinion on the definition of substantial? Or is
 8 there one existing?
 9 MS. JAMISON: I think there is one in the
 10 statute of substantive policy statement.
 11 MR. GILL: I brought it forward several
 12 months. It basically states if it's affecting all
 13 the operators. That's why I don't understand
 14 anything that doesn't affect all owner/operators
 15 doesn't basically need to be written down. The thing
 16 is this is not a real simple issue and the reason so
 17 many of these are brought forward as overriding
 18 issues is because one individual may have that issue
 19 in an appeal, but six or seven others may have the
 20 same, but they're not in an appeal. How are we going
 21 to discuss these issues or policies or non-policies
 22 if we can't discuss them? And they do not -- in most
 23 cases they do not go up to an AG or ALJ because the
 24 decision is made we'll settle for this and this and
 25 this rather than go all the way. Because

1 owner/operators don't want to spend the money to go
 2 all the way and in Brian Beck's case he doesn't want
 3 to spend the money to go all the way if he can make a
 4 settlement. I guarantee you he sure would like to.
 5 These are issues that every one of us feel if we take
 6 it all the way, we will win. But we don't have the
 7 option of doing that. If an owner/operator -- that's
 8 their decision and we stand by it. I don't know how
 9 we can discuss these. I sent you a letter the other
 10 day and I haven't heard anything. At the last
 11 meeting I sent you two examples.
 12 MR. BINGHAM: I did receive them. If I
 13 recall you were on vacation. I don't know what you
 14 want from me.
 15 MR. BEAL: What kind of resolution can be
 16 expected from discussions on it? It's pretty clear
 17 we can talk about things that may be happening from a
 18 lot of owner/operators without having that appeal
 19 process. But what resolution can come from that?
 20 What's the benefit of discussion? You expect ADEQ to
 21 agree that, all right, never mind, we won't appeal
 22 those anymore?
 23 MR. GILL: Again, we listed a bunch of
 24 what we're being told is policy and we went down to
 25 the Commission and they said, no, this is not a

1 MS. NOWACK: Mr. Chairman, the SAF
 2 decision log was a tool that was used by the SAF
 3 contractor which was Peterson Consulting firm to
 4 document decisions that DEQ had made in order to
 5 consistently review applications.
 6 MR. OHARA: You provided that to us as
 7 policy?
 8 MS. NOWACK: Yes, I did.
 9 MR. OHARA: That policy no longer exists?
 10 MS. NOWACK: That decision log is no
 11 longer in use.
 12 MR. OHARA: Is there anything written
 13 that someone can go through and say I want to know
 14 what the Assurance Fund pays for and doesn't?
 15 MS. NOWACK: Our cost ceilings are a tool
 16 but just because it's on a cost ceiling does not mean
 17 it will or will not be paid for. In fact, if it's
 18 not on cost ceilings doesn't mean we won't pay for
 19 it. So that's not --
 20 MR. OHARA: Like an example at the last
 21 meeting about equipment not being paid for unless
 22 it's turned on, asphalt, repaving, just general
 23 things, is there a written format somewhere?
 24 MS. NOWACK: No, there is not.
 25 MR. OHARA: Is that what you are going to

1 policy, this is not a policy. The next time that the
 2 case manager says it's our policy to do this then we
 3 said Ian said this is not a policy.
 4 MR. BEAL: I guess I'm understanding. I
 5 know we're dealing with inconsistencies in a
 6 non-written policy. But we discussed this plus the
 7 resolution we can come to of the problem, what's the
 8 end to it? Other than an appeal and a formal appeal
 9 process, what would be the benefit of discussing
 10 these things? It's a kind of a difficult position to
 11 state here. But it's the very thing to be here for
 12 because the program is having problems discussing
 13 from the owner/operator point of view and from ADEQ
 14 point of view on the same topics, but yet we're
 15 not -- without a case by case, I don't see how we can
 16 say, okay, this will solve that. It's not going to
 17 happen.
 18 MR. GILL: Again, you can't discuss it
 19 case by case.
 20 MR. BEAL: Right. There's clearly
 21 something going on to make both sides difficult to
 22 work on it. Without an appeal we can't resolve the
 23 issues.
 24 MR. SMITH: Are all of the policies
 25 contained in the guidance document?

1 give us?
 2 MR. GILL: I didn't realize that the log
 3 that you were talking about was the Peterson log.
 4 That's unfortunate it's not done anymore. That's
 5 really what was being used to say basically this was
 6 what was paid for at one time. As long as the
 7 situation matches because, indeed, there are
 8 different situations based on the site, but as long
 9 as the situations are similar, it's unfortunate that
 10 something like that isn't kept. Because, again, one
 11 of the biggest frustrations that all owner/operators
 12 and consultants have to deal with are 12 years of
 13 inconsistencies. That is one way to get rid of the
 14 inconsistencies is to have something to go back to
 15 and say we did make a decision based on this and this
 16 and this, this scenario meets the criteria. It's
 17 unfortunate that is not kept anymore.
 18 MR. BECK: Some of the issues and stuff
 19 that we're coming up with now is more along the lines
 20 of a technical interpretive difference between case
 21 managers within DEQ. This is in the CRU, the UST and
 22 the SAF. You're seeing different interpretations of
 23 the same policy so to speak. It would be really good
 24 if Peterson's list for SAF was to be continued. Also
 25 to have the UST group to provide a list of

1 MR. BINGHAM: Minus the two that have been
 2 discussed here, as far as I know. That's why we had
 3 the stakeholder meetings. These issues were brought
 4 up. The case managers have done this or this has
 5 occurred. You've been to some. That's how the
 6 discussions went. So the ones that I'm aware of that
 7 are not covered in guidance are the two that Mr. Gill
 8 and Mr. Beck have referred to today. I'm sure
 9 there's more but they haven't been brought to us to
 10 my knowledge.
 11 MR. SMITH: If it's not in the guidance
 12 document it's not current policy?
 13 MR. BINGHAM: Unless it's already on file
 14 with the Secretary of State. But I think our
 15 guidance policies covers those, too.
 16 MR. OHARA: We won't pay for XYZ.
 17 MR. GILL: I think they're both -- it's
 18 really difficult to separate the issue and SAF.
 19 MR. OHARA: When we first met three years
 20 ago we got all the policies in effect at that point
 21 from the Department and we had this big ADEQ
 22 decision. We had a list of these things written
 23 down, we will pay for tent poles, we won't pay for
 24 equipment, there were probably 90 of them. My
 25 understanding is that's no longer -- it went away?

1 discrepancies that occur between one or two case
 2 managers, things that we can demonstrate. That's
 3 what we're running against right now. Different
 4 interpretations. Basically like a topic oriented
 5 presentation or discussion.
 6 MR. SMITH: It would seem to me at least
 7 going forward we have a guidance document now. It
 8 should contain all the policies that we should live
 9 by. I guess looking in arrears the only way and the
 10 only avenue open to us to resolve past issues is the
 11 appeal process, and, you know, if owner and operators
 12 are stopping the process and not taking it to the
 13 conclusion to get a decision or a reading or an
 14 interpretation on a policy that was or was not in
 15 place at the time, you know, clearly for monetary
 16 reasons, then we're not ever going to resolve that.
 17 I guess if people are willing to cut the process
 18 short for monetary reasons, that the problem will
 19 keep cropping up and hopefully those owners and
 20 operators will finally get the clue that even if it's
 21 for a dollar, I'm going to have to take this to the
 22 end to get a resolution. I don't think that we're
 23 going to solve it here. I don't think we have the
 24 authority to solve it here because it does get down,
 25 as everybody said, to a case by case individual

1 basis.
 2 MR. O'HARA: Moving forward, like I said
 3 Ian has told us that he's going to bring forward any
 4 new policies coming forward and I think we have a
 5 guidance policy going forward for an example of new
 6 policies being instituted, either written or
 7 unwritten that we don't see, I think, that would be
 8 appropriate to bring forward and look at it.
 9 Like I said, if there are any things in
 10 Mr. Beck's letter that are appropriate going through
 11 it you and I can get together, and really apply to
 12 Policy Commission mandates, I think it's appropriate
 13 for us to look at and bring it up in a consolidated,
 14 concise way so we make some recommendations. Okay?
 15 MR. GILL: Okay.
 16 MR. O'HARA: Are you done now?
 17 MR. GILL: Yes.
 18 MR. O'HARA: I'm going to call for a
 19 break. I have to boilerplate this. I don't have a
 20 break in my boilerplate. We'll take a break for ten
 21 minutes. Thanks.
 22 (Whereupon there was a break taken in the
 23 proceedings from 10:10 to 10:25 a.m.)
 24 MR. O'HARA: We're ready to go back on the
 25 record. Thank you. Item number 4, Funding of UST

1 Compliance Inspection Program. I know this is an
 2 Issue that Roger brought to my attention. Do you
 3 want to say anything or turn this over?
 4 MR. BEAL: I'd like to give you the reason
 5 that I did. I found the compliance percentages were
 6 to me a little bit alarming, meaning in the future we
 7 may have issues because we're not ensuring that the
 8 UST program is effective today. I don't mean that as
 9 a slap in anybody's face. It's just some numbers
 10 there. What's it going to take to make sure that the
 11 program is there for tomorrow? I talked to
 12 Mr. Curran a little bit about it and it's the same
 13 old thing, funding. Mr. Curran would like to talk.
 14 Go ahead.
 15 MR. CURRAN: For the record, I'm Ron
 16 Curran with DEQ. Basically I think that people are
 17 not aware that the UST Program of the DEQ is composed
 18 of the underground storage tank section up front,
 19 more the prevention part of the program, leaking
 20 underground storage tank program which is the
 21 corrective action and the State Assurance Fund that
 22 factors into reimbursements or appropriate
 23 reimbursements of corrective actions, and as such one
 24 of my main missions is, as the underground storage
 25 tank section manager, is to provide to the best of my

1 ability adequate release prevention. The information
 2 that I provided at the program conference on June 5th
 3 was information, and to the best of my abilities was
 4 factual and I did give some data there that
 5 essentially showed we've been doing some good. I
 6 think intuitively you can recognize money up front
 7 for prevention is probably worth a lot more than
 8 money down the road for corrective action. So I
 9 think we would all like to prevent releases versus
 10 looking at them afterwards.
 11 Back in 1996 or fiscal year 1996, there
 12 was 978 releases reported, LUST, reported and that
 13 number has continuously declined through 2001 that
 14 ended June 30 last year. That had gone down to 108
 15 releases. I can't, as manager, we can't take sole
 16 credit for that and apply it to the inspection side
 17 of the program, but we do factor into that that we're
 18 getting out there with our inspection and ensuring
 19 that the owner/operators of the 3000 facilities out
 20 there and the roughly 8000 tanks are in compliance
 21 with the operational requirements and I think if
 22 they're in compliance with operational requirements,
 23 the leak inspections, et cetera, there is a much,
 24 much better probability of preventing releases and/or
 25 detecting that release early enough if that release

1 occurs.
 2 At that time, also in that conference on
 3 June 5th I provided some data that said rough
 4 compliance rates, and there were compliance rates
 5 that we looked at for a variety of things. One was
 6 for the 1998 upgrades that were the federal upgrades
 7 that went into effect, actually everybody was aware
 8 of them back on December of '88 and finally came into
 9 effect and enforceable on December of '98 and we've
 10 been in special facilities for what we call the '98
 11 upgrade criteria since then. And since 12-22-98 we
 12 have inspected 2600 of about 3000 UST facilities and
 13 we have a better than a 97 percent substantive
 14 compliance rate. In other words, they have a spill
 15 bucket in place, they have overflow prevention, they
 16 have documentation of corrosion protection.
 17 I also said at that time that the
 18 documentation that we view when we go to the
 19 facility, which all we can do we can only look at
 20 documentation to ensure that they're meeting
 21 operational standards and we do a housekeeping check
 22 too, how clean is the sump and a couple of other odds
 23 and ends. But basically the documentation that we
 24 get at the time of the inspection suggests they're
 25 about a 70 percent compliance rate with leak

1 detection. We'd like to get that a little bit
 2 better. We'll work on that with the resources we
 3 have.
 4 Getting over the resource area and back a
 5 few years ago, we were able to do a thousand
 6 inspections a year. With our 3000 facilities that
 7 kept us on about a three or three and a half year
 8 cycle. Right now with my current staffing, with my
 9 current funding, I project that as of June 30th of
 10 this year, which is the end of fiscal year '02, I'll
 11 be down to less than five inspections a year which
 12 puts me on a six year cycle of inspecting facilities.
 13 Back in 1998 and 1999 the same issues
 14 funding, shortfall funding for the -- for the
 15 inspection compliance program was addressed through
 16 the Policy Commission and there was a natural
 17 subcommittee and at that time the recommendation was
 18 or support actually of the Policy Commission was that
 19 they recognized a need for an adequate, and to some
 20 extent strong, compliance program, prevention
 21 program, so that we kept the numbers of releases to a
 22 dull roar.
 23 Again, I still have the funding issues.
 24 We didn't come up with a resolution at that point.
 25 I'm still working with funding concerns and I'm still

1 working with staffing concerns and I'm still working
 2 with a director who recognizes -- the director of the
 3 agency is very, very big on prevention programs, and
 4 particularly the UST Prevention Program and the
 5 agency is trying to work with me and staff and my
 6 boss to see what we can do to really beef the program
 7 up to get the staffing levels back up to get more
 8 inspections on an annual basis.
 9 So at that point I mean that's the
 10 information that I have to impart and welcome any
 11 questions.
 12 MR. SMITH: How short are you in big round
 13 numbers in your funding to adequately do your job?
 14 MR. CURRAN: If I look at what I'd like to
 15 have in terms of employees, FTE's if you will,
 16 anywhere between about 500,000 plus or minus a year.
 17 MR. SMITH: Okay.
 18 MR. CURRAN: And previously we had
 19 appropriations from the legislature I think back in
 20 FY '99 and FY2000 we had combined a total of a
 21 million dollars of general fund appropriations with
 22 the stakeholder's Policy Commission going to bat for
 23 us back then. Yes, sir?
 24 MR. BEAL: Do you have a number that you
 25 feel the EPA recommends in terms of visitation, how

1 frequently you would inspect the site?
 2 MR. CURRAN: There's a couple of different
 3 numbers being bandied about right now. The EPA based
 4 upon a general accounting office report back in
 5 October of 2001 it's a three-year cycle. Right now
 6 Congressional Senate Bill 1850 is recommending a two
 7 year cycle of inspecting.
 8 MR. BEAL: You're at six years?
 9 MR. CURRAN: Probably more than six years
 10 based on projected numbers of inspections based on
 11 our sources currently.
 12 MR. SMITH: Is the EPA suggesting that or
 13 more compliance. I guess my bigger question is is
 14 the Arizona program going to be at risk for not being
 15 approved in compliance, whatever the term is, under
 16 the eyes of the U.S. EPA for not meeting the three
 17 year time frame?
 18 MR. CURRAN: If I could interpret your
 19 question, okay?
 20 MR. SMITH: Does that make sense?
 21 MR. CURRAN: Basically according to the
 22 administrator of OUSTW, the Office of Underground
 23 Storage Tanks of Washington, they're not going to
 24 hold our feet to the fire. They are setting the goal
 25 out there, they have put this goal in writing having

1 think it should disappear.
 2 MR. OHARA: Should we renew that
 3 recommendation?
 4 MR. SMITH: Yes.
 5 MR. OHARA: Vote on it again?
 6 MR. SMITH: Yes. I think it's an absolute
 7 integral part and I think it's, you know, blatant as
 8 can be out there to see they're very closely tied.
 9 Yeah, I would be very in favor of working between now
 10 and this fall when the legislative agendas and bills
 11 and whatnot start to get written, start to get worked
 12 on, that we in the next Policy Commission meeting for
 13 August and September between now and then, and then
 14 in August and September, put together some
 15 recommendations to go to the legislature and say this
 16 is important and we need to find some funding or
 17 rearrange existing funding to support his shortfall
 18 of about half a million dollars. In the overall
 19 scheme of things not that much money for the return.
 20 It will give us on the other end from Ian and
 21 Patricia's standpoint of trying to clean it up after
 22 it's leaked. That would be much more than that half
 23 a million dollars when you look at the total
 24 population.
 25 MR. OHARA: Okay. We'll have this on a

1 a facility inspection once every three years, but are
 2 not going to hold our feet to the fire under the
 3 grant request because I do get federal dollars to
 4 administer the program also. They are not going to
 5 hold our feet to the fire if we don't meet that
 6 target, but they will ask for an explanation why we
 7 don't meet that target.
 8 MR. SMITH: Would that put the program as
 9 a whole in jeopardy?
 10 MR. CURRAN: I can't answer that at this
 11 point. If I had an arm wave a little bit, I don't
 12 think so. No. Are you talking about state program
 13 approval?
 14 MR. SMITH: Yes, that's what I'm talking
 15 about.
 16 MR. CURRAN: Yeah. I don't think that
 17 would be a significant issue at that point.
 18 MR. BEAL: Mr. Curran, I remember some
 19 other percentages of compliance on actions that were
 20 even less than 70 percent. Do you remember what they
 21 are?
 22 MR. CURRAN: Yes. As I mentioned,
 23 Mr. Beal, we look at all documentation at the UST
 24 facility that relates to operational compliance at
 25 the time that we do the facility inspection. If I

1 future agenda to try to vote and a recommendation
 2 from the Commission.
 3 MR. CURRAN: If there's any specific
 4 information that you need to evaluate the issue, I'd
 5 be happy to provide that.
 6 MR. SMITH: One other question. Ron, you
 7 said that you're approximately 500,000 short in
 8 budget moneys a year. How many FTE's are you short?
 9 MR. CURRAN: I'm at around a 44 percent
 10 vacancy rate right now. But as I said the director
 11 of the agency is well aware. We had a state freeze
 12 on as far as hiring which went across all state
 13 agencies, so that is part of the issue.
 14 MR. SMITH: But you still have those --
 15 MS. HOLLOWAY: Positions?
 16 MR. SMITH: -- positions?
 17 MR. CURRAN: I have the positions and
 18 they're available.
 19 MR. SMITH: And the funding for that?
 20 MR. CURRAN: I have them budgeted right
 21 now.
 22 MR. SMITH: Okay. And the \$500,000 is on
 23 top of that to be able to get out and do the job?
 24 MR. CURRAN: If I look at adequacy of the
 25 inspection compliance program, in other words,

1 look at -- if that paperwork is not totally in order,
 2 i.e. according to statute and rule, doesn't provide
 3 me all the information I need, the documentation
 4 isn't there, that would potentially result in an
 5 informal action, either it could be a Notice of
 6 Opportunity to Correct, or if it's egregious it might
 7 be a Notice of Violation at the time of the
 8 inspection, at the completion of inspection. If I
 9 just look at what the compliance rate is at that
 10 point in time it's about 15 percent. So about 85
 11 percent of facilities we look at at the time of the
 12 inspection 85 percent are not in compliance with all
 13 requirements.
 14 MR. BEAL: Thank you. Which raises the
 15 question of funding so things are done right. For me
 16 I see without the compliance, without knowing that
 17 the equipment is working, without these inspections,
 18 the LUST program is going to get swallowed.
 19 MR. OHARA: I know a year or two years
 20 ago we had the same issue and we made a strong
 21 recommendation to the legislature we support the
 22 program and compliance inspections and we made a
 23 recommendation to provide funding. Do we need to
 24 renew that?
 25 MR. BEAL: It's a bitter pill. I don't

1 running about a thousand inspections per year having
 2 adequate compliance, or the ability for the small
 3 percentage of, shall we say, egregious violators, I
 4 need a pretty good compliance program to go with that
 5 and the people to go with that. So if I look at that
 6 on an annual basis and with my revenue sources, which
 7 are the tank fees, \$100 per tank per year, as well as
 8 about \$200,000 per year from the EPA, that's my
 9 source. Just from a budgetary standpoint, my
 10 shortfall is about \$500,000 a year.
 11 MR. SMITH: Okay.
 12 MR. OHARA: All right. Thank you, Ron.
 13 Moving on to Item 5, this is the same
 14 agenda item we had last meeting but I asked Jeff to
 15 come back and I'd like Jeff to provide a brief
 16 synopsis of this issue for the benefit of the members
 17 who weren't here last meeting, and then it does say
 18 vote on the legal opinion from the Attorney General's
 19 Office. After speaking with Nancy Jamison, I think,
 20 it would be better for us and the commission to meet
 21 with your attorney, Laurie Woodall, in executive
 22 session and we'll try to schedule that piggyback on
 23 our meeting in August so we can have a 20 or 30
 24 minute Executive Session prior to or after that
 25 meeting.

1 Jeff, would you please describe your
2 issue?
3 MR. TREMBLY: Thank you, Mr. Chairman.
4 Jeff Trembly with Mogollon Environmental Services.
5 That's M-o-n-g-o-l-l-o-n. It's in the headline this
6 morning where the fires are burning.
7 As we're all aware when the State
8 Assurance Fund was established a co-pay was set up
9 for owners and operators to be responsible for some
10 portion of the payment and typically it's 90 percent
11 by the SAF and 10 percent by the owner and operator.
12 There are some owners and operators and consultants
13 who believe it is lawful or the consultant to credit
14 the owner and operator that ten percent and not
15 really have the ten percent paid the consultants.
16 There are other consultants that believe that is
17 unlawful. I believe there are individuals within the
18 department who would also consider it to be unlawful.
19 And it becomes a matter of competition. If you
20 believe that practice is unlawful, you can't compete
21 with someone who believes it is. They can go to an
22 owner and operator and say, I'll do this work and it
23 won't cost you a nickel. You can't compete with
24 that.
25 I know that I spoke to another consultant

1 last week who had an owner and operator call them and
2 say you can have this job if you pay the co-pay.
3 They said no and the guy said thanks a lot and hung
4 up. That was the end of their work potential.
5 So I think it's important to the program.
6 It speaks to the competition and the less
7 competition the higher the prices. That's kind of a
8 given. So I think it's something that needs to be
9 determined and I think the only way it can be
10 determined is for the AG to render an opinion.
11 MR. OHARA: Nancy, do you want to
12 describe your discussion. I think the gist of it was
13 the pros and cons to having a legal opinion coming
14 from the AG. So I think would you mind doing that?
15 MS. JAMISON: Well, I don't want to try to
16 frame all of the issues because we did talk though
17 about whether it would be an issue that an opinion
18 would really be helpful to resolve their -- depending
19 on -- I mean if the AG said, yes, this is lawful,
20 then would that tend to encourage the practice even
21 more? If the AG said it's not lawful, how would it
22 be enforced? Issues like that and it just -- in
23 talking it over we just thought this might be
24 something to bring up to Laurie Woodall who has an
25 extensive background in state government and kind of

1 get her legal advice on whether it would be to the
2 benefit of either the Policy Commission or the
3 program to seek this, to seek such an opinion from
4 the AG.
5 So that would be my recommendation that we
6 not vote at this meeting, but that we talk it over in
7 an Executive Session asking for legal advice and
8 possible legal ramifications, especially for the
9 program.
10 MR. OHARA: Okay. Any other discussion
11 from members or the general public?
12 MS. KELLY: Ona Kelly, Tierra Dynamics. It
13 is very hard to lose a client because they don't want
14 to pay a co-pay. All of us understands that co-pay
15 has to be paid. The Department is very committed
16 about that. I don't think anybody in this room
17 doesn't know it has to be paid. Anybody in this
18 business knows it has to be paid. The State
19 Assurance application says right on it, "I, we,
20 certify any costs invoiced including a co-pay
21 corrective action will be paid by me. I further
22 under penalty of perjury that all facts and
23 statements set forth..." now that's pretty strong
24 language. I don't know what more he would like the
25 Department to do. That is pretty strong language.

1 And it's right below where the client signs. That's
2 the only point I wanted to bring up. I don't think
3 this is necessary.
4 MR. OHARA: Thank you. Anyone else?
5 MR. PEARCE: John Pearce. Does the AG
6 have an interpretation on this? I guess my only
7 concern is there is a legal determination made by the
8 AG's office and there might be consultants that might
9 be, as well as owner/operators, that might not be
10 acting consistent with it? If there is no
11 determination by the AG's office --
12 MS. JAMISON: Mr. Chairman, Mr. Pearce,
13 I'm not aware of any determination.
14 MR. PEARCE: Once there's a determination
15 made I would advocate that it be made know to the
16 stakeholders, the consultants, as soon as possible so
17 we get out and make sure they're not in violation of
18 it.
19 MR. OHARA: Thank you, John. Okay.
20 Moving on to Item Number 6, discussion of agenda
21 items for next month's Commission meeting. Any
22 member or member of the public have any items for
23 next month's meeting?
24 MR. SMITH: Certainly the UST preventative
25 front end compliance inspection.

1 MR. OHARA: Okay. I think in the last
2 meeting we talked about -- spoke with Patricia on
3 making a presentation on cost ceilings and what other
4 states are doing. Maybe look at how effective our
5 cost end program is.
6 MR. GILL: Is she also going to clarify
7 again the changes to the -- I'm thinking about 1338
8 for next month?
9 MR. OHARA: Senate Bill 1338? Any other
10 items. Mr. Beck?
11 MR. BECK: I think an item that needs to
12 be put on for discussion is for UST volunteers.
13 Under 49-10521 the program was established for
14 underground storage tank volunteers. Under the
15 volunteer program a person fills out a series of
16 forms for the ADEQ. ADEQ goes through the process of
17 approving or denying whether the person is a
18 volunteer. After a volunteer has been accepted by
19 ADEQ a number of legal issues are basically resolved.
20 The first one is the property owners are
21 not responsible for the release of impact of the site
22 or the associated UST. The fact that a lot of people
23 I know that have been applying recently as an UST
24 volunteer basically have been getting that as an item
25 so they could sell the property and not have a chain

1 of liability on the environmental issues. That's one
2 thing the people have been doing.
3 The second thing they get is access to the
4 UST Fund to do site clean up to half a million
5 dollars. UST volunteers also in the program are
6 eligible to 100 percent reimbursement from the SAF.
7 Part of this the way we understand it and interpreted
8 by several people, the usual 10 percent co-pay that's
9 associated is not assessed to the UST volunteer. The
10 ADEQ has to go out and seek that from the ADEQ
11 operator of the particular UST.
12 The overall UST Program is very good but
13 has two shortcomings to it that we see at the present
14 time. The first one is that the UST volunteer, the
15 ADEQ has determined that the UST volunteer is not
16 eligible for the SAF release limit increase to a
17 million dollars. This is because ADEQ has
18 interpreted that only UST owners/operators are
19 eligible for the SAF limited increase.
20 The second thing is that being a UST
21 volunteer ADEQ has determined that even though a UST
22 volunteer is eligible for 100 percent coverage, the
23 UST volunteer has to pay for the application costs.
24 As stated previously ADEQ has to seek cost recovery
25 for the ten percent co-pay from the UST-determined

1 owner and operator by ADEQ. Thus one would expect
 2 the UST volunteer would not have to pay the SAF
 3 application cost. The current position is by ADEQ
 4 the cost of the SAF application is required under law
 5 to apply to the co-pay and ADEQ cannot pay for this
 6 cost. Thus the UST volunteer has to pay for the SAF
 7 preparation cost. This is wrong and not in keeping
 8 with the civil points with state law.
 9 The UST owner/operator is responsible for
 10 the 10 percent co-pay. The SAF application cost is
 11 applied towards the co-pay. The UST volunteer is
 12 eligible for 100 percent cost coverage from the SAF.
 13 It would seem that the denial of the SAF application
 14 fee by ADEQ to the UST co-pay or to the UST volunteer
 15 is not in keeping with what the law states that
 16 they're fully eligible for 100 percent of the cost
 17 recovery.
 18 I think that this should be put on the
 19 agenda for discussion.
 20 MR. O'HARA: Okay. Thank you. Members,
 21 do you think that's an issue? Thank you, Mr. Beck.
 22 Any other comments?
 23 MS. FOSTER: Could I go back to that?
 24 MR. O'HARA: As long as we don't discuss
 25 it very much.

1 appeal?
 2 MR. PEARCE: No. It's a question on how
 3 the Department is interpreting the rule.
 4 MR. O'HARA: I think that issue came up
 5 several years ago. I thought it was resolved.
 6 MR. PEARCE: I don't remember how it was
 7 resolved. Clarification is what we're after.
 8 MR. O'HARA: Okay. Any other agenda items
 9 for the next meeting? Comments?
 10 Item Number 7, general call to the public.
 11 Any member of the public have any comment on any
 12 issue relative to the Commission?
 13 MS. KELLY: I apologize I got in late. I
 14 did get the figures that Mr. Bingham gave for the
 15 qualification in regards to the SAF backlog. My
 16 understanding is that you said there are only 6
 17 preapprovals over 90 days?
 18 MR. BINGHAM: I believe so but I'm not --
 19 I believe that was the number.
 20 MS. HOLLOWAY: That's what I have.
 21 MS. KELLY: The point is I ask that you
 22 look at that because just on my own tracking I have 4
 23 that are over 90 days and I don't submit a large
 24 amount of approvals. So I'm guessing that number --
 25 if that's correct. I ask that you revisit that.

1 MS. FOSTER: Isn't that a legal opinion
 2 and I don't think that the Commission was developed
 3 to make legal opinions.
 4 MR. O'HARA: The policy or legal opinion.
 5 MS. FOSTER: That's definitely a legal
 6 opinion.
 7 MR. O'HARA: I think that we should make
 8 recommendations to the legislature if we think
 9 something needs to be changed that's in the statute.
 10 MS. FOSTER: Because a volunteer, doesn't
 11 he also have a right to go back to the owner of the
 12 property who is responsible for it and recover those
 13 costs through legal matters?
 14 MR. O'HARA: We'll discuss it next time.
 15 MR. BECK: Basically I think the UST
 16 Policy Commission should recommend to the director
 17 any kind of changes with its determination or policy
 18 that the ADEQ has come up with as far as the SAF
 19 application cost.
 20 Also the other thing, yes, there is
 21 recourse, but it's a third party liability charge and
 22 in the law it says ADEQ is supposed to recover that
 23 10 percent from the ADEQ-determined owner/operator.
 24 So there would be no reason for the UST volunteer to
 25 go back and seek additional cost for recovery.

1 MR. O'HARA: Any other comments from the
 2 public? Okay. The next meeting will be August 21.
 3 Real quickly Myron has a brief comment.
 4 MR. SMITH: I have a brief comment. I'm
 5 sorry Jeannine is not here to hear this but I hope,
 6 Joe, you'll take it to her. The Corrective Action
 7 Rules have finally gotten to GRRRC. At the GRRRC
 8 hearing they essentially had no technical heartburn
 9 with it. There was a lot of legal questions they had
 10 with it. They were very appreciative of the efforts
 11 that had been made by the ADEQ and the stakeholders.
 12 The guidance documents are done. I can't count that
 13 high to say the number of man hours put into it but
 14 certainly Joe and Jeannine are due a big world of
 15 thanks for all the efforts they've done over the
 16 years to get these two documents where they are. So
 17 I'd like to say thank you to both of you. And
 18 everyone else who worked on it that I don't know the
 19 names.
 20 MR. O'HARA: Real quick, Al, are we going
 21 to continue to meet at the DEQ meeting room?
 22 MR. JOHNSON: As of right now that is
 23 unknown where we're going to meet. We're actively
 24 looking for a place and I will let everyone know when
 25 we find one.

1 MR. O'HARA: Any other agenda items? I
 2 don't want to discuss that. It's not been noticed on
 3 the agenda.
 4 MS. NOWACK: Mr. Chairman, I would just
 5 like to know if the Policy Commission is interested
 6 in hearing the results of the State Fund
 7 Administrators Survey presented this week at the
 8 conference?
 9 MR. O'HARA: That would be good. Thank
 10 you. Any other agenda items?
 11 MR. PEARCE: I've been asked to raise the
 12 issue of whether ADEQ is interpreting the SAF Rule
 13 pertaining to ranking claims for risk in a way that
 14 where one receives a diminished number of ranking
 15 points once a site characterization is complete.
 16 And, if so, where the Department feels that is
 17 appropriate, reducing ranking points once the
 18 position is complete? This is where a claimant
 19 hasn't been paid. It seems if the Department is
 20 doing that the --
 21 MR. O'HARA: Briefly on that issue --
 22 MR. PEARCE: I looked at the rule and
 23 there is nothing that speaks to whether it should be
 24 done that way.
 25 MS. JAMISON: Is this related to a pending

1 MR. SMITH: Since the legislature is not
 2 in session is there a chance we can get one of their
 3 hearing rooms between now and the end of the year
 4 until the legislature starts to meet again until
 5 things settle down with your move to the new
 6 building?
 7 MR. JOHNSON: That's a good suggestion.
 8 I'll check into it.
 9 MR. PEARCE: How come you don't like the
 10 conference room?
 11 MR. JOHNSON: It was the coffee.
 12 MR. O'HARA: Thank you for providing the
 13 room. Meeting is adjourned. Thank you for coming.
 14 See you in August.
 15
 16 (Whereupon the hearing was adjourned at
 17 11:00 o'clock a.m.)
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CERTIFICATE

I, CAROLE A. WHIPPLE, hereby certify
that the foregoing pages numbered from 1 to 68
inclusive, constitute a full, true and accurate
record of the proceedings had in the above matter,
all done to the best of my skill and ability.

DATED this 4th day of July, 2002.

CAROLE A. WHIPPLE
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